

# EXHIBIT 1

SUM-100

# SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Equinox Holdings, Inc., a Delaware corporation; and DOES 1 to 10, inclusive

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Michael Andrews

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desachar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court of California, County of San Francisco, 400 McAllister Street, San Francisco, CA 94102-4515

CASE NUMBER: (Número del Caso):

0 GC - 19 - 581860

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jenny S. Yelin, Rosen, Bien, Galvan &amp; Grunfeld, LLP, 101 Mission Street, 6th Floor, San Francisco, CA 94105

DATE:  
(Fecha)

DEC 27 2019

CLERK OF THE COURT

Clerk, by  
(Secretario)

DE LA VEGA-NAVARRO, ROSSEL (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

(SEAL)

## NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): **EQUINOX Holdings, Inc., a Delaware Corporation**  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)  
☐ other (specify):
- ☒ by personal delivery on (date)

1 SANFORD JAY ROSEN – 062566  
GA CROSTHWAIT GRUNFELD – 121944  
2 JENNY S. YELIN – 273601  
ROSEN BIEN GALVAN & GRUNFELD LLP  
3 101 Mission Street, Sixth Floor  
San Francisco, California 94105-1738  
4 Telephone: (415) 433-6830  
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5 Email: srosen@rbgg.com  
ggrunfeld@rbgg.com  
6 jyelin@rbgg.com

7 Plaintiff MICHAEL ANDREWS

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11  
12 MICHAEL ANDREWS,

13 Plaintiff,

14 v.

15 EQUINOX HOLDINGS, INC., a Delaware  
corporation; and DOES 1 to 10, inclusive,

16 Defendants.  
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ENDORSED  
FILED  
San Francisco County Superior Court  
DEC 27 2019  
CLERK OF THE COURT  
BY: ROSSALY DE LA VEGA  
Deputy Clerk

CGC-19-587860

Case No.

COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff MICHAEL ANDREWS hereby complains against defendants EQUINOX  
2 HOLDINGS, INC. and DOES 1 through 10 as follows:

3 **INTRODUCTION**

4 1. Plaintiff MICHAEL ANDREWS had a long, successful career in the fitness  
5 industry, ultimately managing the personal training and fitness staff for the upscale Sports  
6 Club/LA facility in downtown San Francisco, from approximately 2009 to 2014.

7 Mr. Andrews was a stellar employee, receiving excellent performance reviews and  
8 significantly increasing the annual revenue of the club during his tenure. Despite his  
9 successful tenure, Mr. Andrews was abruptly terminated in September 2014, when  
10 defendant EQUINOX HOLDINGS, INC. (hereinafter "EQUINOX") acquired the Sports  
11 Club/LA and its facilities, including the San Francisco club where Mr. Andrews worked.

12 2. EQUINOX markets itself as a lifestyle brand for wealthy, young, physically  
13 fit adults. Its website boasts that the company offers members the opportunity to be part of  
14 an exclusive "club" and encourages its members to "commit to high-performance living."  
15 When EQUINOX acquired the Sports Club/LA facility where Mr. Andrews had worked  
16 successfully for five years, it determined that Mr. Andrews did not fit the image it wished  
17 to project to potential members. Mr. Andrews was 61 years old, had suffered a stroke one  
18 year earlier, and had required surgery for a related heart condition, requiring medical leave.  
19 EQUINOX perceived Mr. Andrews to be an older person with a disability who did not  
20 convey the youth and perfect bodily health EQUINOX wanted its employees to display to  
21 its members and potential members. EQUINOX therefore discharged Mr. Andrews  
22 shortly before the acquisition of Sports Club/LA was finalized, and informed him that it  
23 believed that he was too stuck in his old ways and that it did not believe he could change  
24 his management style. With no warning, and without providing him an opportunity to  
25 conform to EQUINOX's way of doing things or otherwise change, EQUINOX escorted  
26 Mr. Andrews out, and instructed him to stay off the premises of the facility he had  
27 successfully managed for many years.

28 3. EQUINOX's decision to discharge and/or not hire Mr. Andrews during the

1 transition was a direct result of discrimination against him because of his age and disability  
 2 or perceived disability. EQUINOX's termination and/or decision not to hire Mr. Andrews  
 3 imposed tremendous hardship on Mr. Andrews, who has not been able to find equivalent  
 4 work due to his age. Mr. Andrews has lost wages and benefits, including health insurance.  
 5 Plaintiff therefore now brings suit based on his wrongful and illegal termination, seeking  
 6 damages, including punitive damages to punish EQUINOX for its illegal discrimination  
 7 against him.

#### 8 JURISDICTION AND VENUE

9 4. This Court has original subject matter jurisdiction over this action pursuant  
 10 to Article VI, section 10 of the California Constitution.

11 5. This Court has personal jurisdiction over Defendants pursuant to California  
 12 Code of Civil Procedure section 410.10.

13 6. Venue is proper pursuant to California Code of Civil Procedure section  
 14 395.5, because EQUINOX's obligations and liabilities arose San Francisco.

15 7. Venue is also proper pursuant to California Government Code section 12965,  
 16 subd. (b) because EQUINOX's unlawful practices were committed in San Francisco.

#### 17 PARTIES

##### 18 Plaintiff Michael Andrews

19 8. Plaintiff MICHAEL ANDREWS ("ANDREWS" or "Plaintiff") is an  
 20 individual residing in Oakland, California. Plaintiff ANDREWS was employed as the  
 21 Fitness Manager of The Sports Club/LA Facility located at 747 Market Street, San  
 22 Francisco, California, 94103 for more than five years, from approximately 2009 to 2014.  
 23 EQUINOX HOLDINGS, INC. acquired Sports Club/LA in 2014, and terminated Plaintiff  
 24 ANDREWS's employment during the transition of ownership. Plaintiff ANDREWS was  
 25 61 years old at the time of his termination by Defendant EQUINOX HOLDINGS, INC.

##### 26 Defendant Equinox Holdings, Inc.

27 9. Defendant EQUINOX is a Delaware corporation having its principal place of  
 28 business in New York, New York. Defendant EQUINOX operates fitness facilities and

1 provides fitness services in the United States, Canada, and the United Kingdom through  
 2 several subsidiaries, including Equinox, which operates the facility formerly owned by  
 3 Sports Club/LA located at 747 Market Street, San Francisco, California, 94103.

4 **Defendants Named Herein as DOES 1 to 10**

5 10. Plaintiff does not know the true names and capacities of those Defendants  
 6 sued herein as DOES 1 through 10, inclusive, and therefore sues those Defendants by such  
 7 fictitious names.

8 11. Plaintiff will amend this Complaint to allege the true names and capacities of  
 9 the Defendants sued herein as DOES 1 through 10 whenever they are ascertained.

10 12. Plaintiff is informed and believes, and on that basis alleges, that each of the  
 11 Defendants sued herein as DOES 1 through 10, inclusive, is in some manner legally  
 12 responsible for the wrongful acts and/or omissions alleged herein.

13 13. Plaintiff is informed and believes, and on that basis alleges, that each of the  
 14 Defendants acted in concert with each and every other Defendant, intended to and did  
 15 participate in the events, acts, practices and courses of conduct alleged herein, and  
 16 proximately caused damage and injury thereby to Plaintiff as alleged herein.

17 14. At all times herein mentioned, each of Defendants, including DOES 1  
 18 through 10, were agents, employees, supervisors, employers, alter egos, and/or joint  
 19 venturers of these Defendants, and were acting both individually and in the course and  
 20 scope of such relationship, and/or as integrated enterprises and/or joint employers, with  
 21 knowledge and/or consent of the remaining Defendants.

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 15. Plaintiff has sufficiently and timely exhausted all necessary administrative  
 24 remedies.

25 16. On July 13, 2015, Plaintiff filed a Charge of Employment Discrimination  
 26 based on age and disability with the Equal Employment Opportunity Commission  
 27 ("EEOC"). The EEOC cross-filed Plaintiff's Complaint with the California Department of  
 28 Fair Employment & Housing ("DFEH") pursuant to the agencies' work sharing agreement.



1 fitness staff at three facilities.

2 21. Plaintiff was hired as the Fitness Manager for The Sports Club/LA facility in  
3 San Francisco in approximately 2009. During his more than five year tenure, he increased  
4 revenue at the facility by approximately \$1 million, to approximately \$1.8 million  
5 annually, and he consistently received excellent performance evaluations. Plaintiff's  
6 annual salary in 2014, his last year of employment with Sports Club/LA, was  
7 approximately \$106,000.00. In addition, Sports Club/LA provided Plaintiff with full  
8 medical coverage for himself and his three immediate family members for an annual cost  
9 of \$12,000 to Plaintiff, while the cost to purchase equivalent insurance after his  
10 termination was over \$18,000. If he had continued his employment with EQUINOX,  
11 Plaintiff's medical coverage would have been the same as it was when he was employed at  
12 Sports Club/LA.

13 22. In approximately 2013, Plaintiff suffered a stroke and required heart surgery  
14 as a result. He took medical leave from his position with Sports Club/LA, and other  
15 employees of the facility knew about his heart condition requiring the surgery. At all times  
16 relevant, including through his termination by EQUINOX, Plaintiff was able to perform  
17 the essential duties of his job, with or without reasonable accommodations. Plaintiff did  
18 not request, and did not receive, any additional reasonable accommodations following his  
19 return from medical leave for his surgery.

20 23. In July 2014, EQUINOX announced that it was acquiring the assets of The  
21 Sports Club/LA, including the San Francisco facility where Plaintiff worked. EQUINOX  
22 announced that the acquisition would be complete after a transition period ending in  
23 October 2014.

24 24. Plaintiff is informed and believes and on that basis alleges that during  
25 transition period, EQUINOX obtained the personnel files of the existing Sports Club/LA  
26 employees at the San Francisco facility, and discovered that Plaintiff had undergone heart  
27 surgery in 2013. Plaintiff is also informed and believes and on that basis alleges that  
28 during the transition period, EQUINOX learned from other employees at the San Francisco



1 facility that Plaintiff had undergone heart surgery in 2013.

2 25. On September 17, 2014, shortly after Plaintiff arrived at work, Brian  
3 Guensler, EQUINOX's Regional Director of Personal Training, asked Plaintiff to go with  
4 him to an office above the main floor of the club. Jack Gannon, EQUINOX's West Coast  
5 Vice President of Operations was waiting in the office when they arrived, as was another  
6 EQUINOX Employee, who worked in Human Resources, whom Plaintiff did not know.

7 26. During the meeting, Mr. Gannon informed Plaintiff that EQUINOX was  
8 terminating him effective immediately, because EQUINOX believed Plaintiff lacked the  
9 "skill set" they wanted. Mr. Gannon informed Plaintiff that EQUINOX would continue to  
10 pay Plaintiff for two more weeks, until the end of the transition period for the acquisition,  
11 on October 3, 2014, but that Plaintiff was relieved of his duties immediately. Mr. Gannon  
12 instructed Plaintiff to leave the premises immediately after first cleaning his office. He  
13 directed Plaintiff not to return to the facility without authorization from the general  
14 manager. This conduct was despicable and displayed a willful and knowing disregard for  
15 Plaintiff's rights and/or subjected Plaintiff to cruel and unjust hardship.

16 27. Immediately following that conversation, Mr. Guensler escorted Plaintiff  
17 from the premises. While they were walking out, Plaintiff asked Mr. Guensler which skills  
18 he and the other EQUINOX managing agents believed Plaintiff lacked. Mr. Guensler  
19 stated, "you are uncomfortable making the hard decisions. You have been doing this so  
20 long that I do not think we can teach you new ways. You are good with the numbers  
21 though." This statement was despicable and displayed a willful and knowing disregard for  
22 Plaintiff's rights and/or subjected Plaintiff to cruel and unjust hardship.

23 28. EQUINOX's Senior Counsel made a similar statement in an April 16, 2015  
24 letter to Plaintiff's Counsel, which stated that EQUINOX made the determination that  
25 Plaintiff "was not the right person to dramatically change the style of management  
26 imposed on the personal trainers at that club." because Plaintiff "had been running the  
27 department in this manner for years." This statement was despicable and displayed a  
28 willful and knowing disregard for Plaintiff's rights and/or subjected Plaintiff to cruel and

1 unjust hardship.

2       29. In addition to Plaintiff, two other management level employees who were  
3 older than 40 (and in fact were older than 50) were terminated on September 17, 2014, the  
4 facility's Maintenance Manager, and the facility's Assistant General Manager. Upon  
5 information and belief, no other employees younger than 40 were terminated during the  
6 transition period after EQUINOX's acquisition of Sports Club/LA.

7       30. EQUINOX did not provide Plaintiff with an opportunity to change his  
8 allegedly inadequate management style before it terminated him and/or decided not to hire  
9 him during the acquisition.

10       31. Plaintiff's termination was a direct result of EQUINOX's discrimination  
11 against him based on his age and perceived disability. EQUINOX perceived Plaintiff to be  
12 too old to fit its marketing image of appealing to young, physically fit, adults.  
13 EQUINOX's stated reason for the termination, that Plaintiff had been managing the  
14 facility in the same way for so long that it did not feel he could learn "new ways" was a  
15 euphemistic way of stating that he was too old to learn the new management style  
16 EQUINOX wanted to impose.

17       32. Similarly, EQUINOX perceived Plaintiff to be a person with a disability  
18 because it believed that he had a physical impairment that was not transitory or minor, in  
19 that it believed he had a serious heart condition. EQUINOX terminated Plaintiff because  
20 Plaintiff's perceived disability did not fit the image EQUINOX desired to portray to the  
21 public of a young, healthy, fit brand.

22       33. Plaintiff is informed and believes and on that basis alleges that Plaintiff was  
23 replaced by a person younger than 40 and who does not have a disability and was not  
24 regarded as having a disability.

25       34. As a direct result of his abrupt and unlawful termination, Plaintiff lost his  
26 salary and his health insurance benefits. Although Plaintiff has worked since his  
27 termination from EQUINOX as a private personal trainer, he has not been able to find  
28 enough work to obtain the same amount of pay he would have received had he continued

1 in his position at EQUINOX. He has also had to pay significantly more for health  
 2 insurance for his family than he would have had to pay had he been able to continue on  
 3 EQUINOX's health insurance plan. Plaintiff has also suffered emotional distress as a  
 4 result of his termination.

5 35. Mr. Gannon, Mr. Guensler, and the other EQUINOX managing agents  
 6 involved in Plaintiff's termination acted on behalf of EQUINOX when they decided to  
 7 terminate Plaintiff's employment. Their decision was also authorized by EQUINOX's  
 8 officers and directors, and was sanctioned and endorsed by EQUINOX's Senior Counsel in  
 9 the letter she sent after Plaintiff's termination. Mr. Gannon, Mr. Guensler, the other  
 10 EQUINOX managing agents involved in Plaintiff's termination, and EQUINOX's Senior  
 11 Counsel acted with a knowing disregard for Plaintiff's rights when terminating and/or not  
 12 hiring him due to his age and their perception of his disability, and engaged in despicable  
 13 conduct by subjecting Plaintiff to cruel and unjust hardship in knowing disregard of his  
 14 rights.

15 **FIRST CLAIM FOR RELIEF**  
 16 **(Age Discrimination in Violation of California Fair Employment and Housing Act—**  
**Against All Defendants)**

17 36. Plaintiff re-alleges and incorporates by reference herein all allegations  
 18 previously made in Paragraphs 1 through 35, above.

19 37. EQUINOX conducts business in California and regularly employs more than  
 20 five individuals, and is thus subject to suit under the California Fair Employment and  
 21 Housing Act, Government Code sections 12900 et seq. ("FEHA").

22 38. Plaintiff was an employee of EQUINOX's predecessor company, Sports  
 23 Club/LA, and was either discharged from his employment with EQUINOX after  
 24 EQUINOX acquired Sports Club/LA in 2014, or was not hired by EQUINOX during the  
 25 acquisition of Sports Club/LA in 2014.

26 39. Plaintiff was 61 years old at the time of his termination by EQUINOX or  
 27 EQUINOX's decision not to hire him.

28 40. Plaintiff's age was a substantial motivating reason in EQUINOX's decision

1 to discharge or not hire him.

2 41. EQUINOX's termination of Plaintiff, or its decision not to hire him, as  
3 alleged above, constituted unlawful discrimination on account of age, in violation of  
4 California Government Code section 12940, subd. (a).

5 42. EQUINOX's discriminatory actions, as alleged above, were a substantial  
6 factor in causing Plaintiff harm.

7 43. As a direct and proximate result of EQUINOX's conduct, Plaintiff has  
8 suffered the loss of wages, salary, and benefits he would have received had his  
9 employment not been wrongfully terminated. As a result of such discrimination and  
10 consequent harm, Plaintiff has suffered such damages in amounts to be determined  
11 according to proof at trial.

12 44. As a further direct and proximate result of EQUINOX's conduct, Plaintiff  
13 has suffered humiliation and emotional distress. As a result of such discrimination and  
14 consequent harm, Plaintiff has suffered such damages in amounts to be determined  
15 according to proof at trial.

16 45. EQUINOX's discriminatory actions were committed with malice, fraud, or  
17 oppression, and in reckless disregard of Plaintiff's rights. Defendants authorized, ratified,  
18 and directed the supervisory employees identified above to discharge Plaintiff in violation  
19 of the FEHA. As such, Plaintiff is entitled to punitive damages under law.

20 WHEREFORE Plaintiff prays for judgment as described below.

21 **SECOND CLAIM FOR RELIEF**  
22 **(Disability Discrimination in Violation of California Fair Employment and Housing**  
**Act—Against All Defendants)**

23 46. Plaintiff re-alleges and incorporates by reference herein all allegations  
24 previously made in Paragraphs 1 through 45, above.

25 47. EQUINOX conducts business in California and regularly employs more than  
26 five individuals, and is thus subject to suit under the California Fair Employment and  
27 Housing Act, Government Code sections 12900 et seq. ("FEHA").

28 48. Plaintiff was an employee of EQUINOX's predecessor company, Sports

1 Club/LA, and was either discharged from his employment with EQUINOX after  
2 EQUINOX acquired Sports Club/LA in 2014, or was not hired by EQUINOX during the  
3 acquisition of Sports Club/LA in 2014.

4 49. As alleged above, EQUINOX knew, through its agents, that Plaintiff had a  
5 physical condition that required him to take time off for surgery. EQUINOX also  
6 perceived Plaintiff to be a person with a significant, non-transitory disability.

7 50. As alleged above, at all relevant times, Plaintiff was able to perform the  
8 essential duties of his jobs with or without reasonable accommodations.

9 51. Plaintiff's history of a disabling medical condition and/or EQUINOX's  
10 perception that he was a person with a disability was a substantial motivating reason for  
11 EQUINOX's decision to discharge him.

12 52. EQUINOX's termination of Plaintiff, or its decision not to hire him, as  
13 alleged above, constituted unlawful discrimination on account of disability, in violation of  
14 California Government Code section 12940, subd. (a).

15 53. EQUINOX's termination of Plaintiff, or its decision not to hire him, as  
16 alleged above, constituted unlawful discrimination on account of disability and violated  
17 California Government Code section 12921's prohibition on an employer discriminating  
18 against individuals by limiting their "opportunity to seek, obtain, and hold employment  
19 without discrimination because of ... physical disability, mental disability, [or] medical  
20 condition."

21 54. EQUINOX's discriminatory actions, as alleged above, were a substantial  
22 factor in causing Plaintiff harm.

23 55. As a direct and proximate result of EQUINOX's conduct, Plaintiff has  
24 suffered the loss of wages, salary, and benefits he would have received had his  
25 employment not been wrongfully terminated. As a result of such discrimination and  
26 consequent harm, Plaintiff has suffered such damages in amounts to be determined  
27 according to proof at trial.

28 56. As a further direct and proximate result of EQUINOX's conduct, Plaintiff

1 has suffered humiliation and emotional distress. As a result of such discrimination and  
 2 consequent harm, Plaintiff has suffered such damages in amounts to be determined  
 3 according to proof at trial.

4 57. EQUINOX's discriminatory actions were committed with malice, fraud, or  
 5 oppression, and in reckless disregard of Plaintiff's rights. EQUINOX authorized, ratified,  
 6 and directed the supervisory employees identified above to discharge Plaintiff in violation  
 7 of the FEHA. As such, Plaintiff is entitled to punitive damages under law.

8 WHEREFORE Plaintiff prays for judgment as described below.

9 **THIRD CLAIM FOR RELIEF**  
 10 **(Declaratory Relief – Against All Defendants)**

11 58. Plaintiff re-alleges and incorporates by reference herein all allegations  
 12 previously made in Paragraphs 1 through 57, above.

13 59. An actual controversy has arisen between Plaintiff, on the one hand, and  
 14 EQUINOX, on the other hand, as to their respective rights, remedies and obligations.  
 15 Specifically, Plaintiff contends and EQUINOX denies that EQUINOX terminated Plaintiff  
 16 because he was over 40 years old and because he was a person with a disability or was  
 17 perceived to be a person with a disability, and that EQUINOX has an illegal policy  
 18 pursuant to which it terminates older workers and workers with disabilities, and that  
 19 EQUINOX fails to take all reasonable steps to prevent discrimination.

20 60. A judicial declaration is necessary and appropriate so that all parties may  
 21 know their respective rights and act accordingly.

22 61. Plaintiff seeks a declaration that EQUINOX has violated the FEHA by  
 23 terminating and/or refusing to hire Plaintiff, and that EQUINOX has a corporate policy of  
 24 terminating older workers and/or workers with disabilities.

25 WHEREFORE Plaintiff prays for judgment as described below.

26 **PRAYER FOR RELIEF**

27 WHEREFORE Plaintiff MICHAEL ANDREWS prays for judgment against  
 28 Defendants EQUINOX HOLDINGS, INC., and DOES 1 to 10, inclusive, and each of

1 them, as follows:

2 1. For compensatory and special damages, according to proof, including lost  
3 earnings, back and front pay, accrued and unpaid vacation, and health and other  
4 employment benefits, and damages for emotional distress and humiliation;

5 2. For interest on lost earnings and benefits at the prevailing legal rate;

6 3. For punitive damages in an amount appropriate to punish defendants and  
7 deter others from engaging in similar misconduct;

8 4. For an award to Plaintiff of his reasonable attorneys' fees and costs of suit,  
9 including expert fees and costs; and

10 5. For such other and further relief as this Court may deem just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demand a trial by jury.

13  
14 DATED: December 27, 2019

Respectfully submitted,

15 ROSEN BIEN GALVAN & GRUNFELD LLP

16  
17 By: 

Jenny S. Yelin

18  
19 Attorneys for Plaintiff MICHAEL ANDREWS

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## **Exhibit A**





STATE OF CALIFORNIA | State and Consumer Services Agency

GOVERNOR EDMUND G. BROWN, JR.

DIRECTOR PHYLLIS W. CHENG

## DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

EEOC Number: 550-2015-00961C  
Case Name: Michael Andrews vs. EQUINOX HOLDINGS INC  
Filing Date: August 18, 2015

### NOTICE TO COMPLAINANT AND RESPONDENT

This is to advise you that the above-referenced complaint is being dual filed with the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

The EEOC is responsible for the processing of this complaint and the DFEH will not be conducting an investigation into this matter. Please contact EEOC directly for any discussion of the complaint or the investigation.

### NOTICE TO COMPLAINANT OF RIGHT-TO-SUE

This letter is also your Right to Sue notice. This Right-To-Sue Notice allows you to file a private lawsuit in State court. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed.

If you have questions about the right to file under federal law, please contact the EEOC using the contact information below.


EEOC Northern California  
450 Golden Gate Ave 5-West  
PO Box 36025  
San Francisco, CA 94102  
(415) 522-3000

EEOC Southern California  
255 East Temple Ste., 4<sup>th</sup> Floor  
Los Angeles, CA 90012  
(213) 894-1100

## **Exhibit B**

EEOC Form 161-A (11/16)

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE  
(CONCILIATION FAILURE)To: Michael Andrews  
From: San Francisco District Office  
450 Golden Gate Avenue  
5 West, P.O. Box 36025  
San Francisco, CA 94102On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(e))

EEOC Charge No.	EEOC Representative	Telephone No
550-2018-00961	Scott H. Doughtie, Enforcement Supervisor	(415) 522-3179

## TO THE PERSON AGGRIEVED:

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

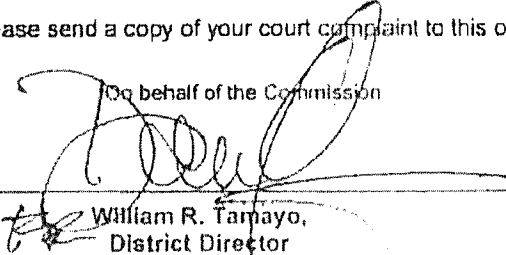
**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

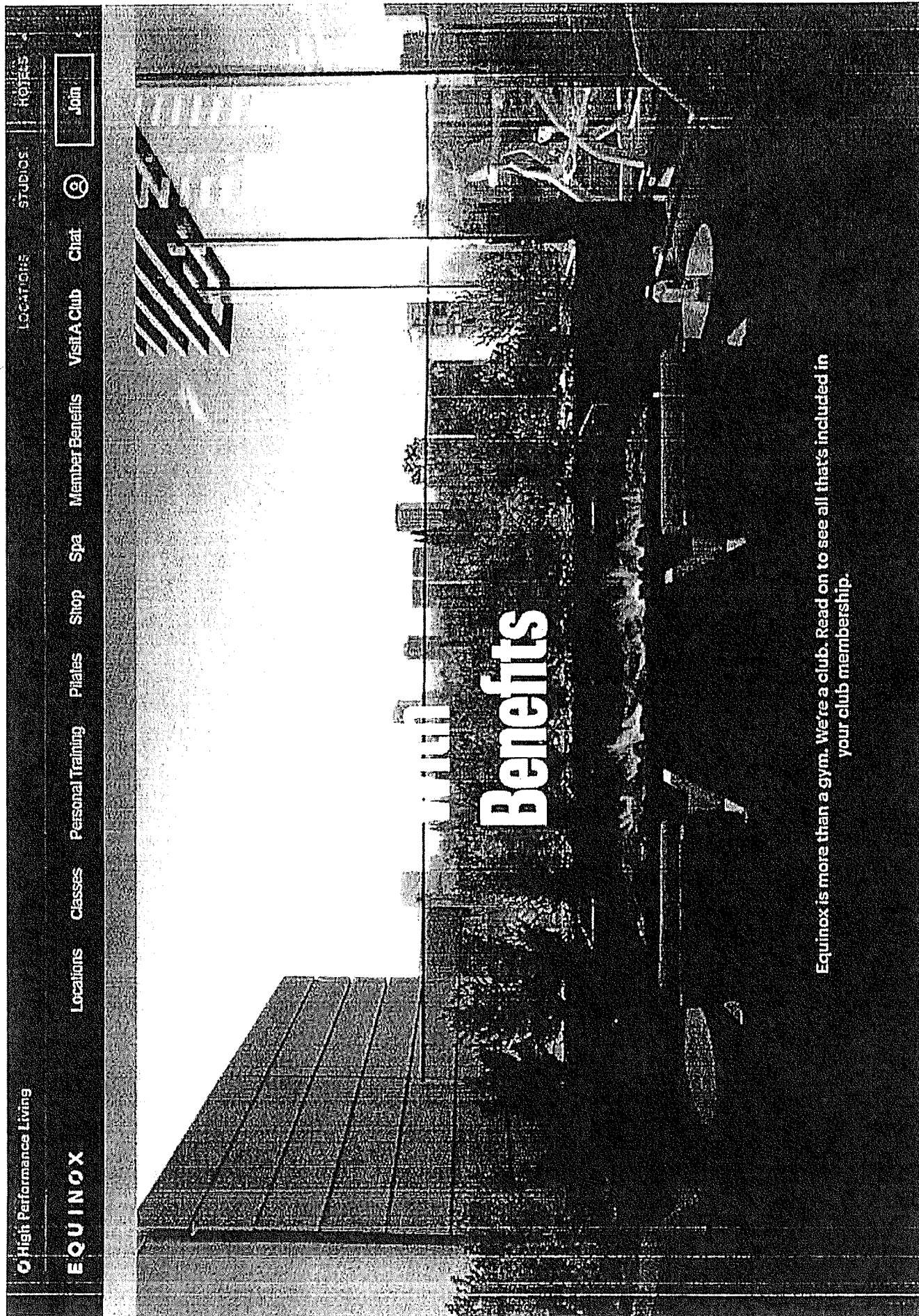
Enclosures(s)

On behalf of the Commission

  
 William R. Tarrayo,  
District Director
10/18/2019  
(Date Mailed)
 CC: Patricia Wencelblat  
 Senior Counsel  
 Equinox Holdings, Inc.  
 895 Broadway  
 New York, NY 10003

 Jenny Yelin  
 ROSEN BIEN GALVAN & GRUNFELD LLP  
 50 Fremont Street, 19<sup>th</sup> Floor  
 San Francisco, CA 94105

## **Exhibit C**



**High Performance Living**

**EQUINOX**

Locations Classes Personal Training Pilates Shop Spa Member Benefits Visit A Club Chat Studios Hotels [Join](#)

# Club Benefits

Equinox is more than a gym. We're a club. Read on to see all that's included in your club membership.



[High Performance Living](#)

[Locations](#)
[Classes](#)
[Personal Training](#)
[Pilates](#)
[Shop](#)
[Spa](#)
[Member Benefits](#)
[Visit A Club](#)
[Chat](#)

[STUDIOS](#)
[HOTELS](#)

[Join](#)

# MEMBERSHIP WITH BENEFITS

Unlimited Group Fitness is just the beginning. Explore all the ways you could unlock your potential with an Equinox membership—including luxe amenities and exceptional services.

[Explore Benefits →](#)

## Kiehl's Products

## Locker Rooms

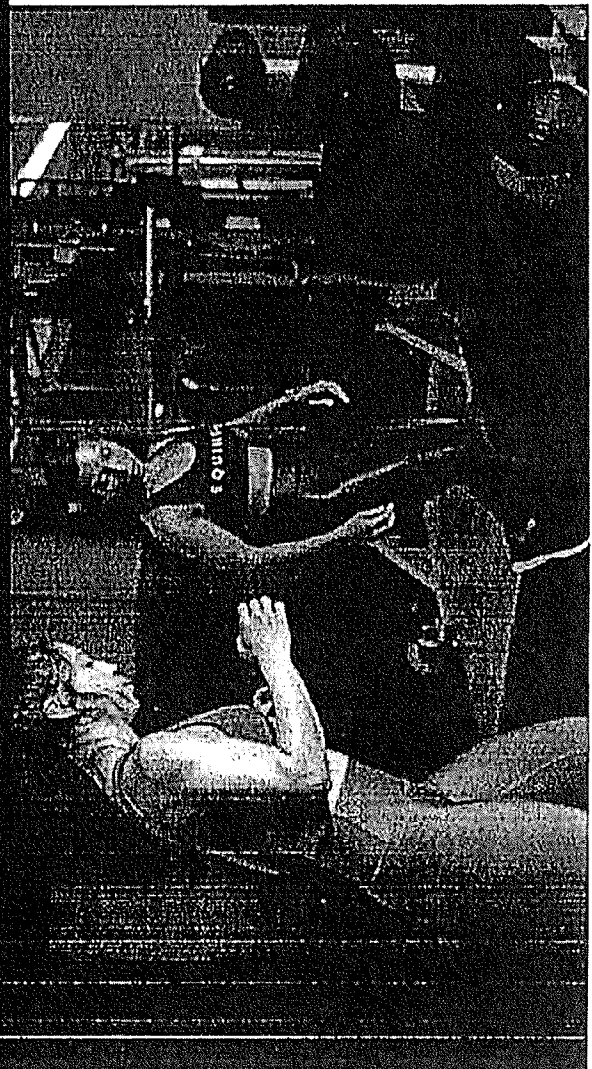
## The Sauna

# MAKE THE IMPOSSIBLE HAPPEN

Together, you and your dedicated personal trainer break records, tear down walls, and unlock the extraordinary. At every step, you're driven by passionate trainers backed by the latest science and our industry-leading institute. Our program. Your results.

## First, we find your partner

It all starts with you and your Equinox trainer. For over 25 years, we've paired hundreds of thousands of members with expert trainers that know how to design a program to support your unique goals, passions, and personality.





## Second, we make your plan

Real metrics lead to real results. Our trainers combine data from your EquiFit, our 1-hour fitness assessment, with information about your lifestyle to build a program that is specific to you and your goals.



## Last, we start the work

Results are not a nice-to-have. They're everything. And our trainers thoughtfully increase the challenge of your training to ensure you never reach a plateau and are always making progress.





# YOUR TRAINER THEIR MANTRA YOUR MOTIVATION

Real members. Real change. Watch these Equinox members do the impossible—driven by a few choice words from their trainers, at the exact moment they need them.





[High Performance Living](#)

[Locations](#)
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[Spa](#)
[Member Benefits](#)
[Visit A Club](#)
[Chat](#)

[STUDIOS](#)

[Join](#)

**Kristine**

Kristine had to get out of her own head to get stronger. Her trainer Wendel took her there by showing how far she's come.

**Malcolm**

An Olympic 2020 karate hopeful, Malcolm had his trainer Eric focus on strength, endurance, and reflexes. So he could prove it on the mat.

CASE NUMBER: CGC-19-581860 MICHAEL ANDREWS VS. EQUINOX HOLDINGS, INC. A DE

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: MAY-27-2020

TIME: 10:30AM

PLACE: Department 610  
400 McAllister Street  
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at [www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org) under Online Services.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE SHOULD PARTICIPATE IN MEDIATION, ARBITRATION, NEUTRAL EVALUATION, AN EARLY SETTLEMENT CONFERENCE, OR OTHER APPROPRIATE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.

(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution (ADR) Information Package on each defendant along with the complaint. (CRC 3.221.) The ADR package may be accessed at [www.sfsuperiorcourt.org/divisions/civil/dispute-resolution](http://www.sfsuperiorcourt.org/divisions/civil/dispute-resolution) or you may request a paper copy from the filing clerk. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the ADR Information Package prior to filing the Case Management Statement.

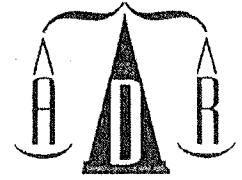
Superior Court Alternative Dispute Resolution Administrator  
400 McAllister Street, Room 103-A  
San Francisco, CA 94102  
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.





Superior Court of California, County of San Francisco  
Alternative Dispute Resolution  
Information Package



The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action together with the cross-complaint. (CRC 3.221(c).)

**WHAT IS ADR?**

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to trial.

**WHY CHOOSE ADR?**

It is the policy of the Superior Court that every long cause, non-criminal, non-juvenile case should participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial. (Local Rule 4.)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

**\*\*Electing to participate in an ADR process does not stop the time period to respond to a complaint or cross-complaint\*\***

**WHAT ARE THE ADR OPTIONS?**

The San Francisco Superior Court offers different types of ADR processes for general civil matters. The programs are described below:

**1) MANDATORY SETTLEMENT CONFERENCES**

Settlement conferences are appropriate in any case where settlement is an option. The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute. Mandatory settlement conferences are ordered by the court and are often held near the date a case is set for trial, although they may be held earlier if appropriate. A party may elect to apply to the Presiding Judge for a specially set mandatory settlement conference by filing an ex parte application. See Local Rule 5.0 for further instructions. Upon approval by the Presiding Judge, the court will schedule the conference and assign a settlement conference officer.

## 2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

(A) **MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO (BASF)**, in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending. Experienced professional mediators work with parties to arrive at a mutually agreeable solution. The mediators provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at [www.sfbbar.org/mediation](http://www.sfbbar.org/mediation) or BASF can assist with mediator selection. BASF staff handles conflict checks and full case management. The success rate for the program is 67% and the satisfaction rate is 99%. BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the fee are available to those who qualify. For more information, call 415-982-1600 or email [adr@sfbbar.org](mailto:adr@sfbbar.org).

(B) **JUDICIAL MEDIATION PROGRAM** provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at any time throughout the litigation process. Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge. Information about the Judicial Mediation Program may be found by visiting the ADR page on the court's website: [www.sfsuperiorcourt.org/divisions/civil/dispute-resolution](http://www.sfsuperiorcourt.org/divisions/civil/dispute-resolution)

(C) **PRIVATE MEDIATION:** Although not currently a part of the court's ADR program, parties may select any private mediator of their choice. The selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

(D) **COMMUNITY BOARDS MEDIATION SERVICES:** Mediation services are offered by Community Boards (CB), a nonprofit resolution center, under the Dispute Resolution Programs Act. CB utilizes a three-person panel mediation process in which mediators work as a team to assist the parties in reaching a shared solution. To the extent possible, mediators are selected to reflect the demographics of the disputants. CB has a success rate of 85% for parties reaching a resolution and a consumer satisfaction rate of 99%. The fee is \$45-\$100 to open a case, and an hourly rate of \$180 for complex cases. Reduction and waiver of the fee are available. For more information, call 415-920-3820 or visit [communityboards.org](http://communityboards.org).

### 3) ARBITRATION

An arbitrator is a neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

#### (A) JUDICIAL ARBITRATION

When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.1 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after being assigned to judicial arbitration. There is no cost to the parties for judicial arbitration.

#### (B) PRIVATE ARBITRATION

Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

### HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's or court-affiliated ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet and available on the court's website); or
- Indicating your ADR preferences on the Case Management Statement (available on the court's website); or
- Contacting the court's ADR Department (see below), the Bar Association of San Francisco's ADR Services, or Community Boards.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution  
400 McAllister Street, Room 103-A, San Francisco, CA 94102  
415-551-3869

Or, visit the court's ADR page at [www.sfsuperiorcourt.org/divisions/civil/dispute-resolution](http://www.sfsuperiorcourt.org/divisions/civil/dispute-resolution)

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE AND FILE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF OR COMMUNITY BOARDS TO ENROLL IN THEIR LISTED PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF OR COMMUNITY BOARDS.

(FILE HERE) ATTORNEY FOR (Name)		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514		
PLAINTIFF/PETITIONER  DEFENDANT/RESPONDENT		
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)		CASE NUMBER _____  DEPARTMENT 610

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- ☐ **Mediation Services of the Bar Association of San Francisco (BASF)** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. [www.sfbar.org/mediation](http://www.sfbar.org/mediation)
- ☐ **Mediation Services of Community Boards (CB)** - Service in conjunction with DRPA, CB provides case development and one three-hour mediation session. Additional sessions may be scheduled. The cost is \$45-\$100 to open a case, and an hourly rate of \$180 for complex cases. Reduction and waiver of the fee are available to those who qualify. [communityboards.org](http://communityboards.org)
- ☐ **Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- ☐ **Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. [www.sfsuperiorcourt.org/divisions/civil/dispute-resolution](http://www.sfsuperiorcourt.org/divisions/civil/dispute-resolution)
- ☐ **Judicial Mediation** - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. [www.sfsuperiorcourt.org/divisions/civil/dispute-resolution](http://www.sfsuperiorcourt.org/divisions/civil/dispute-resolution)

Judge Requested (see list of Judges currently participating in the program): \_\_\_\_\_

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

☐ 30-90 days ☐ 90-120 days ☐ Other (please specify) \_\_\_\_\_

☐ **Other ADR process (describe)** \_\_\_\_\_

2) The parties agree that the ADR Process shall be completed by (date): \_\_\_\_\_

3) Plaintiff(s) and Defendant(s) further agree as follows:

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

\_\_\_\_\_  
Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Date: \_\_\_\_\_

Dated: \_\_\_\_\_

☐ Additional signature(s) attached

STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Print name, State Bar number, and address) Sanford J. Rosen, 062566, Gay Crosthwait Grunfeld, 121944 Jenny S. Yelin, 273601 101 Mission Street, 6th Floor San Francisco, CA 94105 TELEPHONE NO: 4154336830 FAX NO: 4154337104 ATTORNEY FOR (Name): Michael Andrews		FOR COURT USE ONLY ENDORSED FILED San Francisco County Superior Court DEC 27 2019 CLERK OF THE COURT BY: ROSSALY DE LA VEGA Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, 94102-4515 BRANCH NAME: Civic Center Courthouse			
CASE NAME: Andrews v. Equinox Holdings, Inc.			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER JUDGE DEPT. <b>CGC-19-581860</b>	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Three
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 27, 2019

Jenny S. Yelin

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CIVIL CASE COVER SHEET

Page 1 of 1



CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (46)  
Medical Malpractice—  
Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)  
Employment  
Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)  
Enforcement of Judgment  
Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) <b>JENNY S. YELIN</b>   SBN: 273601 Rosen, Bien, Galvan & Grunfeld LLP 101 Mission Street, Sixth Floor San Francisco, CA 94105 TELEPHONE NO.: (415) 433-6830   FAX NO.   E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY  <b>ELECTRONICALLY FILED</b> <i>Superior Court of California, County of San Francisco</i>  <b>01/06/2020</b> <b>Clerk of the Court</b> BY: ANGELICA SUNGA Deputy Clerk
<b>Superior Court of California County of San Francisco</b>  STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:	
PLAINTIFF/PETITIONER: MICHAEL ANDREWS DEFENDANT/RESPONDENT: EQUINOX HOLDINGS, INC., A DELAWARE CORPORATION et al.	
<b>PROOF OF SERVICE OF SUMMONS</b>	CASE NUMBER: CGC-19-581860  Ref. No. or File No.: 1092-1

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a. ☒ summons
  - b. ☒ complaint
  - c. ☒ Alternative Dispute Resolution (ADR) package
  - d. ☒ Civil Case Cover Sheet (served in complex cases only)
  - e. ☐ cross-complaint
  - f. ☒ other (specify documents): Notice to Plaintiff
3. a. Party served (specify name of party as shown on documents served):  
**EQUINOX HOLDINGS, INC., A DELAWARE CORPORATION**
- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):  
**GKL Corporate/Search, Inc. by it's employee Clint Congdon - Authorized Agent**
4. Address where the party was served: **ONE CAPITOL MALL, SUITE 660  
SACRAMENTO, CA 95814**
5. I served the party (check proper box)
  - a. ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 12/30/2019 (2) at (time): 12:49 PM
  - b. ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3b):
    - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., §415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
    - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PETITIONER: MICHAEL ANDREWS

RESPONDENT: EQUINOX HOLDINGS, INC., A DELAWARE CORPORATION et al.

CASE NUMBER:

CGC-19-581860

- c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): \_\_\_\_\_ (2) from (city): \_\_\_\_\_
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section): \_\_\_\_\_

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify): \_\_\_\_\_
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): **EQUINOX HOLDINGS, INC., A DELAWARE CORPORATION**  
under the following Code of Civil Procedure section:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other: _____                                 |

7. Person who served papers

- a. Name: **MICHAEL LYNN HENRY - Specialized Legal Services, Inc.**
- b. Address: **1112 Bryant St., Suite 200 San Francisco, CA 94103**
- c. Telephone number: **(415) 357-0500**
- d. The fee for service was: **\$ 170.00**
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ registered California process server:
- (i) ☐ owner ☐ employee ☒ independent contractor.
- (ii) Registration No.: **2019-24**
- (iii) County: **SACRAMENTO**

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- or
9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: **12/30/2019**

★ **Specialized Legal Services, Inc.**  
**1112 Bryant St., Suite 200**  
**San Francisco, CA 94103**  
**(415) 357-0500**  
**www.specializedlegal.com/**

**MICHAEL LYNN HENRY**

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)

# **EXHIBIT 2**

Dylan B. Carp (State Bar No. 196846)  
JACKSON LEWIS P.C.  
50 California Street, 9th Floor  
San Francisco, California 94111-4615  
Telephone (415) 394-9400  
Facsimile: (415) 394.9401  
E-mail: [Dylan.Carp@jacksonlewis.com](mailto:Dylan.Carp@jacksonlewis.com)

Attorney for Defendant  
EQUINOX HOLDINGS, INC.

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**01/16/2020**  
Clerk of the Court  
BY: MADONNA CARANTO  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MICHAEL ANDREWS,

Plaintiff,

v.

EQUINOX HOLDINGS, INC., a Delaware  
corporation; and DOES 1 to 10, inclusive,

Defendants.

Case No. CGC-19-581860

**DEFENDANT EQUINOX HOLDINGS.  
INC.'S ANSWER TO COMPLAINT  
AND AFFIRMATIVE DEFENSES**

Complaint Filed: December 27, 2019  
Trial Date: None Set

Defendant EQUINOX HOLDINGS, INC. ("Defendant") hereby answers the unverified  
Complaint filed by Plaintiff MICHAEL ANDREWS ("Plaintiff") as follows.

**GENERAL DENIAL**

Defendant responds to Plaintiff's unverified Complaint pursuant to California Code of Civil  
Procedure section 431.30(d) and generally denies each and every allegation set forth in the  
Complaint. Defendant further denies that Plaintiff is entitled to any of the relief requested in the  
Complaint; denies that Defendant is guilty of any wrongful conduct or omission, whether alleged  
or otherwise; and denies that any conduct or omission by Defendant, its employees, or its agents  
caused any injury or damage to Plaintiff in the amount alleged, an amount to be alleged, or  
otherwise claimed. Pursuant to Code of Civil Procedure Section 431.30(d), Defendant denies,  
generally and specifically, each and every allegation contained in Plaintiffs' unverified complaint.

1 **AFFIRMATIVE DEFENSES**

2 Defendant hereby states the following defenses to the Complaint, but does not assume the  
3 burden of proof on any such defense except as required by applicable law. Defendant reserves the  
4 right to assert additional defenses or otherwise supplement this Answer upon discovery of facts or  
5 evidence rendering such action appropriate.

6 **FIRST AFFIRMATIVE DEFENSE**

7 *Failure to State a Cause of Action*

8 The Complaint as a whole, and each cause of action alleged therein, fails to state facts  
9 sufficient to constitute a cause of action against Defendant upon which relief may be granted.

10 **SECOND AFFIRMATIVE DEFENSE**

11 *Statute of Limitations*

12 Each cause of action in the Complaint is barred in whole or in part by all applicable statutes  
13 of limitation, including but not limited to those set forth in California Code of Civil Procedure §§  
14 335.1, 340(a), 340(b), 343, 338, and 338.1, California Government Code  
15 §§ 12960 and/or 12965(b), and other applicable law.

16 **THIRD AFFIRMATIVE DEFENSE**

17 *At-Will Employment*

18 Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein, is  
19 barred to the extent Plaintiff's employment was for an unspecified duration and therefore, pursuant  
20 to Labor Code § 2922, terminable at will, with or without cause, in Defendant's sole discretion.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 *Same Decision, No But-For Causation*

23 Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein, is  
24 barred because assuming arguendo that discriminatory or retaliatory reasons had been a motivating  
25 factor in any employment decisions toward Plaintiff (which Defendant denies), Defendant would  
26 have made the same employment decisions toward Plaintiff for legitimate, non-discriminatory,  
27 non-retaliatory business reasons. *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203.

28 ///

**FIFTH AFFIRMATIVE DEFENSE***Failure to Use Ordinary Care*

Any recovery on Plaintiff's Complaint, and each purported claim for relief alleged therein, is barred, in whole or in part, by California Labor Code §§ 2854, 2856, 2857, and 2922, in that Plaintiff failed to use ordinary care and diligence in the performance of his duties and failed to comply substantially with the reasonable directions of his employer.

**SIXTH AFFIRMATIVE DEFENSE***Exercise of Reasonable Care*

Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein, is barred in whole or in part because Defendant exercised reasonable care to prevent and correct promptly any alleged discriminatory, harassing or retaliatory behavior.

**SEVENTH AFFIRMATIVE DEFENSE***Privileged*

Any recovery on Plaintiff's Complaint is barred because Defendant's conduct was privileged and/or justified under California law and occurred in good faith based upon good cause and for valid business reasons. Moreover, Plaintiff has not shown that he has suffered any harm due to Defendant's conduct.

**EIGHTH AFFIRMATIVE DEFENSE***Punitive Damages*

Plaintiff's punitive damages claim is barred because Defendant at no time engaged in discriminatory practices or actions intentionally, with malice, and/or with reckless disregard to Plaintiff's or other employees' statutory rights.

**NINTH AFFIRMATIVE DEFENSE***Failure to Exhaust Administrative Remedies*

The Complaint, and each cause of action therein, is barred for failure to exhaust administrative remedies.

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**TENTH AFFIRMATIVE DEFENSE**

*Failure to Mitigate*

Defendant alleges that Plaintiff has failed to exercise care and diligence to mitigate any alleged damages Plaintiff may have suffered as a consequence of Defendant's alleged actions. Moreover, any recovery is barred or limited and restricted by Plaintiff's failure to mitigate or take reasonable steps necessary to mitigate his damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

*Waiver, Estoppel, Consent, Unclean Hands*

The Complaint, and each alleged cause of action contained therein, is barred by the equitable doctrines of waiver, estoppel, consent, and unclean hands.

**TWELFTH AFFIRMATIVE DEFENSE**

*Laches*

Plaintiff's claims are barred to the extent that Plaintiff unreasonably delayed in bringing this action against Defendant.

**THIRTEENTH AFFIRMATIVE DEFENSE**

*After-Acquired Evidence*

To the extent discovery may disclose information which could serve as a basis for the termination of Plaintiff's employment, Plaintiff is barred from recovery by the after-acquired evidence doctrine.

**FOURTEENTH AFFIRMATIVE DEFENSE**

*Offset*

Plaintiff is barred from recovering any damages for lost wages, or any recovery for lost wages must be offset or reduced, to the extent Defendant has already compensated him for the alleged wage violations or compensated him in excess of what was required by law. Defendant is entitled to a set-off for amounts Plaintiff owes Defendant for receipt of any wages and other benefits to which he was not entitled and/or did not earn.

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**FIFTEENTH AFFIRMATIVE DEFENSE**

*Failure to Exercise Reasonable Care/Avoidable Consequences*

Plaintiff's Complaint is barred because to the extent that any wrongful actions of Defendant could be construed as unlawful (which Defendant denies), Defendant exercised reasonable care to prevent such conduct and would have taken immediate and appropriate corrective action to remedy and stop any such alleged misconduct if Plaintiff had informed it about the alleged misconduct. However, Plaintiff failed to utilize the preventive or corrective remedies provided to prevent and to otherwise avoid such harm. Plaintiff's claims are therefore barred in whole or limited in part by the doctrine of avoidable consequences.

**RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES**

Plaintiff has failed to set out his claims, counts, and causes of action, if any, with sufficient particularity to permit Defendant to raise all potentially appropriate defenses, and thus Defendant reserve the right to state additional affirmative defenses as the bases for Plaintiff's purported claims, counts, and causes of action become known.

**PRAYER FOR RELIEF**


WHEREFORE, Defendant prays for judgment against Plaintiff, as follows:

1. That judgment be awarded in favor of Defendant and against Plaintiff, and that the Complaint be dismissed with prejudice in its entirety;
2. That Plaintiff take nothing by the Complaint;
3. That Defendant be awarded reasonable attorneys' fees, expert witness fees, and costs of suit; and
4. For such other and further relief as the Court shall deem just and proper.

Dated: January 16, 2020

JACKSON LEWIS P.C.

By:

  
Dylan B. Carp  
Attorney for Defendant  
EQUINOX HOLDINGS, INC.

PROOF OF SERVICE – for e-service

I, Marilou R. Barairo, declare that I am employed with the law firm of Jackson Lewis P.C., whose address is 50 California Street, 9<sup>th</sup> Floor, San Francisco, California 94111-4615; I am over the age of eighteen (18) years and am not a party to this action.

On January 16, 2020, I caused to be e-served the attached document, **DEFENDANT EQUINOX HOLDINGS. INC.'S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**, in this action by uploading a true and correct copy thereof, in PDF format, for electronic filing and service by File&Serve Xpress (a court-approved Electronic Filing Service Provider), pursuant to Local Rule 2.11. Said document to be *e-filed* with the Court, *e-served* and served by mail on Plaintiff's counsel of record, whose contact information is as follows:

Sanford Jay Rosen, Esq. GA Crosthwait Grunfeld Jenny S. Yelin, Esq. Rosen Bien Galvan & Grunfeld LLP 101 Mission Street, Sixth Floor San Francisco, CA 94105-1738 Telephone: (415) 433-6830 Facsimile: (415) 433-7104 E-mail: <a href="mailto:srosen@rbgg.com">srosen@rbgg.com</a> <a href="mailto:ggrunfeld@rbgg.com">ggrunfeld@rbgg.com</a> <a href="mailto:jyelin@rbgg.com">jyelin@rbgg.com</a>	<i>Attorney for Plaintiff</i>
--	-------------------------------

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on January 16, 2020, at San Francisco, California.

  
Marilou R. Barairo

# EXHIBIT 3

Case 3:17-cv-02181 Document 1-1 Filed 04/19/17 Page 63 of 75

Case 2:08-cv-00505-KJM-DAD Document 201 Filed 10/30/12 Page 1 of 2

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY COSBY,

NO. CIV. S-08-505 LKK/DAD

Plaintiff,

v.

ORDER

AUTOZONE, INC., JIM KULBACKI  
and DOES 1-100, inclusive,

Defendants.

The court is in receipt of Plaintiff's acceptance of remittitur, ECF No. 199. Plaintiff has accepted the court's remittitur of Plaintiff's economic damage award from \$174,000.00 to \$4,917.60, and the court's remittitur of Plaintiff's non-economic damage award from \$1,326,000 to \$250,000.00.

Accordingly, JUDGMENT IS HEREBY ENTERED in accordance with Plaintiff's acceptance of remittitur, as of the date of Plaintiff's filed acceptance of remittitur, October 3, 2012.

////

Case 3:17-cv-02181 Document 1-1 Filed 04/19/17 Page 64 of 75

Case 2:08-cv-00505-KJM-DAD Document 201 Filed 10/30/12 Page 2 of 2

1 Plaintiff's motion for attorney fees and costs, ECF No. 107,  
2 was stayed pending resolution of Defendant's appeal, see Order, ECF  
3 No. 147, and remains pending. Plaintiff SHALL re-notice his motion  
4 for attorney fees and costs, pursuant to Eastern District of  
5 California Local Rule 230(b) (2012), submitting updated affidavits  
6 with regard to attorney costs and fees.

7 IT IS SO ORDERED.

8 DATED: October 29, 2012.  
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Case 3:17-cv-02181 Document 1-1 Filed 04/19/17 Page 66 of 75

Case 2:08-cv-00505-KJM-DAD Document 83 Filed 02/12/10 Page 1 of 3

**FILED**

FEB 12 2010

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY [Signature]  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RANDY COSBY,

Plaintiff,

v.

AUTOZONE, INC.,

Defendant.

NO. CIV. S-08-505 LKK/DAD

V E R D I C T

We, the jury in the above-entitled case, find as follows:

**FAILURE TO ENGAGE IN INTERACTIVE PROCESS OF ACCOMMODATION**

1. Did Randy Cosby have a physical disability that limited his ability to drive, work or sleep?

☒ YES ☐ NO

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Did Randy Cosby request that AutoZone make reasonable accommodation for his physical disability so he would be able to perform the essential job requirements?

1 ☒ YES ☐ NO

2 If your answer to question 2 is yes, then answer question 3.  
3 If you answered no, stop here, answer no further questions, and  
4 have the presiding juror sign and date this form.

5 3. Was Randy Cosby willing to participate in an interactive  
6 process to determine whether reasonable accommodation could be made  
7 so that he would be able to perform the essential job requirements?

8 ☒ YES ☐ NO

9 If your answer to question 3 is yes, then answer question 4.  
10 If you answered no, stop here, answer no further questions, and  
11 have the presiding juror sign and date this form.

12 4. Did AutoZone fail to participate in a timely, good-faith  
13 interactive process with Randy Cosby to determine whether  
14 reasonable accommodations could be made?

15 ☒ YES ☐ NO

16 If your answer to question 4 is yes, then answer question 5.  
17 If you answered no, stop here, answer no further questions, and  
18 have the presiding juror sign and date this form.

19 5. Was AutoZone's failure to participate in a good-faith  
20 interactive process a substantial factor in causing harm to Randy  
21 Cosby?

22 ☒ YES ☐ NO

23 If your answer to question 5 is yes, then answer question 6.  
24 If you answered no, stop here, answer no further questions, and  
25 have the presiding juror sign and date this form.

26 ////

Case 3:17-cv-02181 Document 1-1 Filed 04/19/17 Page 68 of 75

Case 2:08-cv-00505-KJM-DAD Document 83 Filed 02/12/10 Page 3 of 3

1 6. What are Randy Cosby's damages?

2 ECONOMIC LOSSES:

3 Past Lost Wages and Benefits: \$ 174,000.00

4 MENTAL SUFFERING:

5 Past Mental Suffering: \$ 1,326,000.00

6 7. By clear and convincing evidence, did an agent or  
7 employee of AutoZone engage in the conduct with malice, oppression  
8 or fraud?

9 ✓ YES        NO

10 After answering number 7, then proceed to the next question.

11 8. By clear and convincing evidence, did one or more  
12 officers, directors or managing agents of AutoZone authorize this  
13 conduct?

14        YES ✓ NO

15

16

17 DATED: 2/12/10

Ken Lowe  
FOREPERSON

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